IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION 1:07 CR 83

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
WILLIAM BRIAN JOHNSON,)	
Defendant.)	
)	

THIS MATTER came on to be heard before the undersigned in chambers, pursuant to a motion filed by defendant's counsel in which defendant's counsel request that the court relieve the defendant from being present at a hearing which is scheduled for October 9, 2008. (#11) After receiving the motion, the undersigned was in contact with Assistant United States Attorney Jill Rose. The court contacted Ms. Rose s to provide the government could have an opportunity to respond to the defendant's motion.

In the motion, the defendant's attorney requests, pursuant to Rule 43 of the Federal Rules of Criminal Procedure, that the defendant not be required to attend a hearing which is scheduled for October 9, 2008. The hearing is to be held pursuant to 18 U.S.C. § 4241 and is to determine whether or not the defendant is competent to proceed in regard to this matter. In the motion of defendant's counsel, defendant's counsel takes the position that the proceeding involves only a conference or hearing

on a question of law and that the defendant would thus not be required to be present, pursuant to Rule 43(b)(3) of the Federal Rules of Criminal Procedure. Further in the motion, defendant's counsel states that he has not been provided an opportunity to review a copy of the report which has been issued in this matter or to discuss its findings with the defendant. In the motion defendant's counsel sets forth the severe medical problems of the defendant which could limit the defendant's physical well being if he is required to appear. Having been advised of this information, the undersigned is of the opinion that it would be in the best interest of justice to conduct a conference with counsel for the defendant and the Assistant United States Attorney on October 9, 2008 to discuss on the record the motion and any problems that would affect the defendant or the U.S. Marshall if the defendants was required to appear. As a result the undersigned has determined to reschedule the hearing to determine the defendant's competency, pursuant to 18 U.S.C. § 4241 so as to provide defendant's counsel shall an opportunity to review the report issued in regard to the defendant and to discuss the report and the proposed absence of the defendant from the hearing which will be conducted in the future, pursuant to 18 U.S.C. § 4241 with the defendant.

ORDER

IT IS, THEREFORE, ORDERED that the motion (#11) of the defendant is

hereby **ALLOWED** and the defendant will not be required to be present at a conference which will take place on October 9, 2008. The hearing which had been scheduled, pursuant to 18 U.S.C. § 4241 to determine the competency of the defendant, will be **CONTINUED** from October 9, 2008 and a further setting of said

hearing will be discussed at the conference.

Signed: October 8, 2008

Dennis L. Howell

United States Magistrate Judge